IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

CRP.No. 723 of 2005

(SM.1/2005 of TALUK LAND BOARD, OTTAPALAM)

REVISION PETITIONERS:
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1. ANILKUMAR, S/O.SUKUMARAN,
KOZHIKKINIPURAYIL, VADAKKUMPURAM DESOM,
CHENNAMANGALAM VILLAGE, PARAVUR TALUK,
ERNAKULAM DISTRICT.

2. SIVAN, S/O.PADMANABHAN,
CHARAKKUMALIL, CHERUKODE,
VALLAPUZHA VILLAGE.

BY ADV. SRI.T.SETHUMADHAVAN
ADV. SRI.PUSHPARAJAN KODOTH
ADV. SRI.K.JAYESH MOHANKUMAR

RESPONDENTS:
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1. THE TALUK LAND BOARD,
OTTAPALAM.

2. TAHSILDAR, OTTAPALAM.

3. VILLAGE OFFICER, SHORANUR.

4. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

5. K.N.S. KAMALAM ANTHERJANAM,
W/O.LATE K.S.SUBRAMANIYAN NAMBOODIRIPAD,
`SAI KRISHNA', INDEEVARAM FLAT,
PUTHENPALLY P.O., GURUVAYOOR, THRISSUR DISTRICT.

BY GOVERNMENT PLEADER SHRI K.G. BHASKARAN.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A. NO. 2014 OF 2005 IN C.R.P.NO. 723 OF 2005

DISMISSED.

16.11.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R.P. No. 723 OF 2005

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Dated this the 16th November, 2007

O R D E R

The revision arises out of the order dated 28.04.2005 in S.M.No.1/05 on the file of the Taluk Land Board, Ottappalam. By the order impugned in this revision, the Taluk Land Board directed the revision petitioners to surrender an extent of 5.46 acres.

2. The 5th respondent, Kamalam Antherjanam and her since deceased husband Subramaniyan Namboodiripad constituted a statutory family under the Kerala Land Reforms Act. They did not file any statement under section 85 of the Kerala Land Reforms Act. According to them, they were not liable to surrender any extent of land since they were not holding any extent of land beyond the ceilings limits. In a family partition of the year 1961 in the family of Subramaniyan Namboodiripad, an extent of 13.14 acres properties was allotted to him which was a private forest. Since the private forest is an exempted category under the Kerala Land Reforms Act, they had no liability to surrender excess land. Subramaniyan Namboodiripad died in 1974.

3. O.A. 59 of 1981 was filed by Kamalam Antherjanam before the Forest

Tribunal, Palakkad claiming exemption in respect of 11.43 acres in Sy.No. 38/2 of Nedungoottur desom of Shoranur 2 village . The O.A. was allowed by the order dated 19.03.1984. The custodian of vested forests challenged that order before the High Court in MFA.No.448 of 1984. The High Court dismissed MFA.No. 448 of 1984. As per the proceedings dated 20.04.1995, the custodian directed that an extent of 11.43 acres should be restored to Kamalam Antherjanam. On 27.04.1995, the said property was restored to her. Thereafter, Kamalam Antherjanam assigned the said extent of 11.43 acres to the revision petitioners as per assignment deed Nos.1103/95 and 1104/95 respectively having an extent of 5.87 acres and 5.56 acres.

4. In 2005, suo motu proceedings were initiated under section 87 of the Kerala Land Reforms Act against Kamalam Antherjanam before the Taluk Land Board, Ottappalam. Notice was also issued to the revision petitioners who are subsequent assignees. The revision petitioners filed objections and contended that the statutory family of Kamalam Antherjanam could hold an extent of 15 ordinary acres of land and therefore there was no liability to surrender any extent of land. The suo motu proceedings were initiated on the premise that Kamalam Antherjanam could hold only that much extent of land as an adult unmarried person since her husband passed away in 1974. This was objected to by the revision petitioners who contended that subsequent change in the constitution

of of the family by birth or death would not alter the statutory family or the total extent of land which could be held by the statutory family.

5. The Taluk Land Board, by the order impugned held that as on 20.04.1995, the date on which the custodian issued the proceedings to resume the land to Kamalam Antherjanam, it should be treated that there was subsequent acquisition which would attract the operation of Section 87 of the Kerala Land Reforms Act. It was also held by the Taluk Land Board that Kamalam Antherjanam is to be treated as a single member family as on 27.04.1995 and she could retain only 7.50 acres of land as per the provisions of the Kerala Land Reforms Act. The Taluk Land Board took the view that family status as on 01.01.1970 is not relevant for the purpose of Section 87 of the Kerala Land Reforms Act. On those reasonings and conclusions, it was held that an extent of 5.46 acres of land is liable to be surrendered and the petitioners were directed to surrender the said extent of land.

6. The Taluk Land Board was right in holding that when an exempted category of land was held to be not an exempted category or otherwise converted into non-exempted category, it could be treated as an acquisition for the purpose of calculating the ceiling area. But the Taluk Land Board was not right in holding that by death of one member of the family, the status of the statutory family would undergo a change and the surviving member of the family

would become a single member family thereby depriving her to retain the extent of land which the statutory family could otherwise hold and possess . This view, taken by the Taluk Land, is clearly erroneous and against the provisions of the Kerala Land Reforms Act. It is also against the law laid down by the Division Bench of this court in ***Kurian vs. Taluk Land Board*** **(1991 (1) KLT 162**). In ***Kurian's*** case as on 01.01.1970, the statutory family consisted of husband, wife and 6 minor children. There was a subsequent acquisition of property in 1974. Proceedings were initiated under section 87 of the Kerala Land Reforms Act. Before the subsequent acquisition, two minor children attained majority and one minor died. The Taluk Land Board took the view that as on the date of subsequent acquisition, the statutory family consisted of only five members and ceiling area was fixed on that basis. This court set aside that order and held that ceiling area so far as a family is concerned is to be determined as on the notified date, namely, 01.01.1970 and it cannot undergo any fluctuation merely on account of reduction in the number of members of the family. In view of the decision in ***Kurian's*** case, the order passed by the Taluk Land Board is not legal and proper. The Taluk Land Board has decided the question of law erroneously warranting interference under section 103 of the Kerala Land Reforms Act.

The order passed by the Taluk Land Board is therefore set aside and the

direction to surrender the excess land by the petitioners is also set aside. The Civil Revision Petition is allowed as above.

K.T. SANKARAN,
JUDGE.

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